IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RSA No. 81 of 1995

Judgment reserved on 13.12.2006

Date of decision 8.1.2007

Bishan Singh Appellant

Versus

Smt.Swantantar Devi and others Respondents

Coram:

The Hon'ble Mr.Justice V.K.Ahuja, Judge.

Whether approved for reporting?[1] Yes

For the Appellant: Mr. N.K.Thakur, Advocate.

For the Respondents: Mr.Ajay Sharma, Advocate, for respondents No.1(b) to 1(l) and 3 to 9.

V. K.Ahuja, J.

This Regular Second Appeal has been filed by the appellant-plaintiff against the judgment and decree of the court of learned Additional District Judge, Una dated 24.12.1994, vide which the decree of the trial court was set aside and plaint was ordered to be returned.

Briefly stated the facts of the case are that the appellant as plaintiff filed a suit for declaration to the effect that he is owner in possession of the land comprised in Khasra No.1618/769, measuring 2 kanal 4 marlas after the death of Dalip Singh. It was alleged that the plaintiff has become owner in possession by way of a Will dated 21.4.1987 executed by one Dalip Singh who was owner in possession of the land and it was alleged that the entries showing Dalip Singh as tenant-at-will to the extent of 1/4th share in the suit land in the revenue record are null and void and have no affect on the rights of Dalip Singh or the plaintiff. It was further alleged that Dalip Singh has been coming in possession of the land as tenant-at-will on payment of rent and he had become owner of the suit land by

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[1] Whether reporter of local papers are allowed to see the judgment ? Yes.

conferment of proprietary rights under the tenancy law on 3.10.1975. The said Dalip Singh was being served by plaintiff and he had executed a valid Will in favour of the plaintiff who has become owner of the land.

Defendants-respondents took up the plea that Dalip Singh was never inducted as a tenant by them, nor he was in possession and there was no question of conferment of proprietary rights on him. The execution of the Will in favour of the plaintiff was also denied.

The learned trial court tried the suit and held that Dalip Singh was owner in possession of the suit land who had executed a valid will in favour of the plaintiff and accordingly the suit of the plaintiff for declaration and permanent injunction was decreed and it was held that the entries showing Dalip Singh as tenant-at-will are wrong, null and void.

On appeal the learned additional and District Judge came to the conclusion that the controversy in between the parties was as to whether Dalip Singh was a tenant in possession and had become owner of the suit land or not. Relying upon the Full Bench judgment of this court in **Chuhniya Devi vs. Jindu Ram etc. etc.,** 1991(12) Sim.L.C.223, it was held that the law laid down in that case was applicable to the present facts and the civil court had no jurisdiction to look into this question and therefore the appeal was allowed and the plaint was ordered to be returned to the plaintiff-appellant for presentation to the court having jurisdiction.

I have heard learned counsel for the parties and have also gone through the records.

The submissions made by Mr.N.K.Thakur, learned counsel for the appellant were that the law laid down in Chuhnia's case (supra) was not applicable to the present facts since the mutation of conferment of proprietary rights qua the shares of major had already been sanctioned in favour of the appellant and the mutation in regard to the remaining share was deferred due to the disability of minor and widow. It was further submitted that the sanction of mutation in favour of the appellant was not

challenged by the respondents and therefore the findings recorded by learned first appellate court are liable to be set aside.

On the other hand, Mr.Ajay Sharma, learned counsel for the respondents had supported the impugned judgment for the reasons recorded therein.

A perusal of record shows that a substantial question of law framed was as to whether the provisions of H.P. Tenancy and Land Reforms Act read with Section 9 of the CPC barred the jurisdiction of the civil court to adjudicate the suit in hand and that as to whether the learned trial court was justified in relying upon the decision in Chuhnia's case.

From a perusal of the judgment of learned trial court it is clear that the learned trial court had given its finding that Dalip Singh had become owner in possession of the suit land by operation of law and thereafter the plaintiff had become owner on the basis of the Will. This observation was made by learned trial court after considering the oral as well as documentary evidence led by the parties. The learned first appellate court had also observed that the dispute in between the parties was as to whether Dalip Singh was a tenant in possession and had become owner by operation of law or not. It has been held by the Full Bench of this Court in Chunhia's case (supra) that the civil court has no jurisdiction to go into the question connected with the conferment of proprietary rights except when a challenge is made that the statutory authority had not acted in conformity with the fundamental principle of judicial procedure or where the provisions of the Act had not been complied with. In such an eventuality when such a question is raised before the civil court it has to return the plaint to the appellant to file a suit taking a specific plea as laid down in the above case. Therefore, the learned first appellate court was right in applying the said decision to the present facts and those findings are based upon correct appreciation of evidence and law and these do not call for any interference by this court and as such are accordingly upheld. The appeal filed by the appellant is dismissed.

January 8,2007(g) **(V.K.Ahuja),J.**